

ENGROSSED

Senate Bill No. 614

(By Senators Klempa, Beech, Williams, Browning, Snyder, Palumbo,
Wills, Foster, Minard, Tucker and Barnes)

[Originating in the Committee on the Judiciary; reported February
28, 2011.]

A Bill to amend and reenact §60A-9-5 of the Code of West Virginia,
1931, as amended, relating to the controlled substances
monitoring generally; permitting specific law-enforcement
officials who are members of federally affiliated drug task
forces access to certain confidential pharmaceutical
information to identify unusual prescription drug behavior;
requiring the State Board of Pharmacy to issue reports to
certain law-enforcement officials, licensing authorities and
prescribers that identify abnormal prescription practices;
establishing an advisory committee to recommend the parameters
of abnormal prescribing patterns and to recommend other
actions that could reduce the amount of misuse of prescription
drugs; establishing a felony offense for misusing information
from the controlled substance database; requiring the Board of
Pharmacy to implement a real-time database when available and

1 when resources permit; requiring implementation of the
2 parameters of abnormal prescribing patterns shall be
3 contingent on available funding; requiring a report to the
4 Legislative Oversight Commission on Health and Human Resources
5 Accountability; granting rule-making authority; and providing
6 immunity to prescribing practitioners for certain reporting
7 based on review of patient specific information contained in
8 the controlled substances monitoring database.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §60A-9-5 of the Code of West Virginia, 1931, as amended,
11 be amended and reenacted to read as follows:

12 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

13 **§60A-9-5. Confidentiality; limited access to records; period of**
14 **retention; no civil liability for required reporting.**

15 (a) (1) The information required by this article to be kept by
16 the State Board of Pharmacy is confidential and is open to
17 inspection only by inspectors and agents of the State Board of
18 Pharmacy, members of the West Virginia State Police expressly
19 authorized by the Superintendent of the West Virginia State Police
20 to have access to the information, authorized agents of local law-
21 enforcement agencies and deputy sheriffs as a member of a federally
22 affiliated drug task force, authorized agents of the federal Drug
23 Enforcement Administration, duly authorized agents of the Bureau
24 for Medical Services ~~and the Workers' Compensation Commission~~, duly

1 authorized agents of the Office of the Chief Medical Examiner for
2 use in post-mortem examinations, duly authorized agents of
3 licensing boards of practitioners in this state and other states
4 authorized to prescribe Schedules II, III and IV controlled
5 substances, prescribing practitioners and pharmacists and persons
6 with an enforceable court order or regulatory agency administrative
7 subpoena: Provided, That all law-enforcement personnel who have
8 access to the controlled substances monitoring database shall be
9 granted access in accordance with applicable state laws and Board
10 of Pharmacy legislative rules and shall be certified as a West
11 Virginia law-enforcement officer and shall have successfully
12 completed U. S. Drug Enforcement Administration Diversion Training
13 and National Association of Drug Diversion Investigation Training.
14 ~~Provided, That all~~ All information released by the State Board of
15 Pharmacy must be related to a specific patient or a specific
16 individual or entity under investigation by any of the above
17 parties except that practitioners who prescribe controlled
18 substances may request specific data related to their Drug
19 Enforcement Administration controlled substance registration number
20 or for the purpose of providing treatment to a patient.

21 (2) Subject to the provisions of subdivision (1) of this
22 subsection, the board shall also review the West Virginia
23 Controlled Substance Monitoring Program database and issue reports
24 that identify abnormal or unusual practices of both health care

1 professionals and patients who exceed predetermined parameters. All
2 reports produced by the board shall be kept confidential and may
3 only be used in furtherance of communicating with licensing boards
4 regarding abnormal prescription and dispensing practices or by
5 prescribers to more effectively manage the medications of their
6 patients. The board shall maintain the information required by
7 this article for a period of not less than five years.

8 Notwithstanding any other provisions of this code to the contrary,
9 data obtained under the provisions of this article may be used for
10 compilation of educational, scholarly or statistical purposes as
11 long as the identities of persons or entities remain confidential.
12 No individual or entity required to report under section four of
13 this article may be subject to a claim for civil damages or other
14 civil relief for the reporting of information to the Board of
15 Pharmacy as required under and in accordance with the provisions of
16 this article.

17 (3) The board shall establish an advisory committee to
18 develop, implement and recommend parameters to be used in
19 identifying abnormal or unusual prescribing or dispensing patterns
20 in this state. This advisory committee shall:

21 (A) Consist of the following members: a licensed physician
22 member of the West Virginia Board of Medicine, a licensed dentist
23 member of the West Virginia Board of Dental Examiners, a licensed
24 physician member of the West Virginia Board of Osteopathy, a member

1 of the Controlled Substance Advisory Board of the Partnership for
2 Community Well-being, a licensed physician certified by the
3 American Board of Pain Medicine and a licensed physician board
4 certified in medical oncology recommended by the West Virginia
5 State Medical Association, a licensed physician board certified in
6 palliative care recommended by the West Virginia Center on End of
7 Life Care, a member of the West Virginia Board of Pharmacy, a
8 licensed physician member of the West Virginia Academy of Family
9 Practice Physicians and a representative of a controlled substance
10 wholesaler chosen by the Board of Pharmacy.

11 (B) Recommend parameters to identify abnormal or unusual
12 prescribing or dispensing patterns of use of controlled substances
13 for both patients and health care professionals in order to prepare
14 reports as requested in accordance with subsection (a), subdivision
15 (2) of this section.

16 (C) Recommend parameters unique to different health care
17 professionals due to the nature of their work such as palliative
18 care physicians, oncologists, and pain medicine specialists.

19 D. Make recommendations for training, research and other areas that
20 are determined by the committee to have the potential to reduce
21 inappropriate use of prescription drugs in this state.

22 (b) Upon receipt of the committee's recommendations of
23 parameters for prescribing and dispensing specific to each
24 profession and subspecialty therewithin, each professional

1 licensing board shall adopt parameters for the profession and
2 subspecialties thereof and provide them to the board.

3 (c) The Board of Pharmacy is responsible for establishing the
4 advisory committee and providing administrative support. The
5 advisory committee shall elect a chair by majority vote. The board
6 shall promulgate rules with advice and consent of the advisory
7 committee, in accordance with the provisions of article three,
8 chapter twenty-nine-a of this code on or before June 1, 2012. The
9 legislative rules must include, but shall not be limited to, the
10 following matters: (1) Identifying parameters used in identifying
11 abnormal or unusual prescribing or dispensing patterns; (2)
12 processing parameters and developing reports of abnormal or unusual
13 prescribing or dispensing patterns for both patients and health
14 care professionals; and (3) establishing the information to be
15 contained in reports and the process by which the reports will be
16 generated and disseminated.

17 ~~(b)~~(d) All practitioners, as that term is defined in section
18 one hundred-one, article two of this chapter who prescribe or
19 dispense schedule II, III or IV controlled substances shall, on or
20 before July 1, 2011, have online or other form of electronic access
21 to the West Virginia Controlled Substances Monitoring Program
22 database;

23 ~~(c)~~(e) Persons or entities with access to the West Virginia
24 Controlled Substances Monitoring Program database pursuant to this

1 section may, pursuant to rules promulgated by the Board of
2 Pharmacy, delegate appropriate personnel to have access to said
3 database;

4 ~~(d)~~(f) Good faith reliance by a practitioner on information
5 contained in the West Virginia Controlled Substances Monitoring
6 Program database in prescribing or dispensing or refusing or
7 declining to prescribe or dispense a schedule II, III or IV
8 controlled substance shall constitute an absolute defense in any
9 civil or criminal action brought due to prescribing or dispensing
10 or refusing or declining to prescribe or dispense; and

11 ~~(e) The Board of Pharmacy is hereby authorized to promulgate~~
12 ~~an emergency rule under chapter twenty-nine-a to effectuate the~~
13 ~~amendments to this section enacted during the 2010 Regular Session~~
14 ~~of the Legislature.~~

15 (g) A prescribing practitioner may notify law enforcement of
16 a patient, who in the prescribing practitioner's judgment may be in
17 violation of section four hundred ten, article four, chapter sixty-
18 a of this code, based on information obtained and reviewed from the
19 controlled substances monitoring database. A prescribing
20 practitioner who makes a notification pursuant to this subsection
21 shall be immune from any civil, administrative or criminal
22 liability that otherwise might be incurred or imposed because of
23 such notification if such notification is made in good faith.

24 ~~(f)~~(h) Nothing in the article shall be construed to require a

1 a practitioner to access the West Virginia Controlled Substances
2 Monitoring Program database.

3 (i) Unauthorized access or use or unauthorized disclosure of
4 the information in the database is a felony punishable by
5 incarceration in a state correctional facility for not less than
6 one year nor more than five years or fined not less than \$3,000 nor
7 more than \$10,000, or both.

8 (j) The Board of Pharmacy shall make every effort to update
9 the database to a real-time database as soon as a system is
10 available and when funding is available. The implementation of the
11 parameters to identify abnormal or unusual prescribing or
12 dispensing patterns or practices as established by this article
13 shall be contingent on available funding.

14 (k) The Board of Pharmacy shall provide an annual report on
15 the West Virginia Controlled Substance Monitoring Program to the
16 Legislative Oversight Commission on Health and Human Resources
17 Accountability with recommendations for needed legislation.